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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,176	06/25/2003	Osamu Goto	09792909-5625	3458
26263	7590	09/23/2004		EXAMINER
		SONNENSCHEIN NATH & ROSENTHAL LLP		NADAV, ORI
		P.O. BOX 061080		
		WACKER DRIVE STATION, SEARS TOWER	ART UNIT	PAPER NUMBER
		CHICAGO, IL 60606-1080	2811	

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/606,176	GOTO ET AL.
	Examiner	Art Unit
	ori nadav	2811

pw

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 September 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 146-205 is/are pending in the application.
- 4a) Of the above claim(s) 146-170 and 177-205 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 171-176 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 June 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/25/03.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of the embodiment of figure 6 (claims 146-157 and 171-183) in the reply filed on 9/13/2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 146-157 and 177-182 which include the limitation of an intermediate layer containing In and Ga, are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected embodiment.

Specification

The abstract of the disclosure is objected to because the phrase "is includes" should read "includes". Correction is required. See MPEP § 608.01(b).

Claim Objections

Claims 171-176 are objected to because of the following informalities: Claim 171 recites third nitride and sixth nitride without having lower nitride numbers. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 171-176 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claimed limitation of a cap layer in contact with the intermediate layer, as recited in claim 171, is unclear as to which layer is the intermediate layer.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 171-173, insofar as in compliance with 35 U.S.C. 112, are rejected under 35 U.S.C. 102(b) as being anticipated by Schetzina (5,670,798).

Schetzina teaches in figure 3 and related text a semiconductor light emitting device comprising:

an active layer 112 InGaN made of a first nitride III-V compound semiconductor containing In and Ga;

an optical guide layer GaN in contact with the active layer and made of a sixth nitride III-V compound semiconductor containing Ga (column 10, lines 31-34);

a cap layer AlGaN in contact with the intermediate layer and made of a third nitride III-V compound semiconductor containing Al and Ga; and a p-type clad layer AlGaN in contact with the cap layer and made of a seventh nitride III-V compound semiconductor containing Al and Ga and different from the third nitride III-V compound semiconductor, wherein

the cap layer has a band gap larger than that of the p-type clad layer, and wherein the cap layer is AlyGa1-yN (where 0<=y<1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 174-176 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schetzina.

Regarding claim 175, Schetzina teaches in the embodiment of figure 3 substantially the entire claimed structure, as applied to claim 171 above, except an undoped optical guide layer. Schetzina teaches in the embodiment of figure 29 an undoped optical guide layer 124c. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use an undoped

optical guide layer in Schetzina's device in order to use the device in an application which requires an undoped optical guide layer.

Regarding claims 174 and 176, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to a cap layer having a thickness equal to or more than 2 nm, and an optical guide layer having a thickness equal to or more than 8 nm, in Schetzina's device, in order to optimize the characteristics of the device according to the requirements of the application in hand.

Papers related to this application may be submitted to Technology center (TC) 2800 by facsimile transmission. Papers should be faxed to TC 2800 via the TC 2800 Fax center located in Crystal Plaza 4, room 4-C23. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 2811 Fax Center number is (703) 308-7722 and 308-7724. The Group 2811 Fax Center is to be used only for papers related to Group 2811 applications.

Any inquiry concerning this communication or any earlier communication from the Examiner should be directed to *Examiner Nadav* whose telephone number is

Art Unit: 2811

(571) 272-1660. The Examiner is in the Office generally between the hours of 7 AM to 4 PM (Eastern Standard Time) Monday through Friday.

Any inquiry of a general nature or relating to the status of this application should be directed to the **Technology Center Receptionists** whose telephone number is **308-0956**



O.N.
9/22/04

ORI NADAV
PRIMARY EXAMINER
TECHNOLOGY CENTER 2800